Mfg. Co. v. *Seaman,* 53 Miss. 655. Although the incidents governing the relation of guardian and ward are covered by express statutes in a majority of the states, the court in the principal case takes occasion to announce what the duties and liabilities are in the absence of any statute on the subject. The general rule as deduced from the cases is that the guardian must keep the ward's money and property separate from his own and make investments not in his own name but in the name of the ward. The fact that the guardian acts in good faith in making an investment is generally held to be no defense to the ward's action. *May* v. *Duke,* 61 Ala. 53; *Jackson* v. *Sears,* 10 (Johns) N. Y. 435; *Smith* v. *Dibrell,* 31 Texas, 239. Where the transactions of the guardian prove beneficial, the court usually adopts them and where they prove detrimental the courts without exception hold the guardian personally liable. In defense of the action it was urged that the guardian's bond was sufficient to cover any discrepancies that might arise by reason of the guardian's failure to keep the ward's money separate from his own. On the principle that the guardian is an officer of the court, the court deemed it its duty to call its officers to account when it has knowledge of maladministration, and in this way protect the sureties on the bond. It was accordingly held that the fact that the guardian's miscarriages were covered by a bond was no defense to an action for his removal where the evidence showed that he had been guilty of gross misconduct. *In re Mansfield Estate,* 206 Pa. St. 64; *Crawford* v. *Crawford,* 91 Iowa 744.

HIGHWAYS—LATERAL SUPPORT.—A macadam road was built by the plaintiffs in accordance with the grants, covenants and conditions of a deed from the defendant, with a parapet and retaining wall at one side. In an action for damages, caused by a subsidence of the road due to the excavating, blasting and removing of rock and soil from adjoining land by the defendant's lessee, *held,* that the adjoining land was burdened with the lateral support of the road, and the lessor is liable, where a nuisance is the necessarily contemplated or probable result of the use of the premises for the purposes for which they are leased. *Board of Chosen Freeholders of Hudson County* v. *Woodcliffe Land Imp. Co.* (1907), — N. J. —, 65 Atl. Rep. 844.

Whether or not the action is maintainable depends upon the right of the plaintiffs to lateral support, and the liability of the defendant for the acts of its lessee. Ordinarily the duty of lateral support of a neighbor's land is limited to the support of the land in its natural condition. It is settled by the general concurrence of the common law courts that where the owner of a lot builds upon his boundary line and the building is thrown down by reason of excavations made upon the adjoining lot, no recovery can be had for the injury to the *building,* in the absence of improper motives and carelessness in the execution of the work. *McGuire* v. *Grant,* 25 N. J. Law 356, 16 Am. Dec. 49; *Gilmore* v. *Driscoll,* 122 Mass. 199; *Foley* v. *Wyeth,* 2 Allen, 131; *Panton* v. *Holland,* 17 Johns. 92; *Lasala* v. *Holbrook,* 4 Paige 169; *Richardson* v. *Vt. Cent. R. R. Co.,* 25 Vt. 465. The natural right of support from adjacent land does not carry with it the right to place an additional weight on the land and claim a right of support for the land with

such added weight. In this case the court renders its decision without regard to the existence and consequent increased weight of the retaining wall. By the weight of authority, both in England and in this country, it is settled that if the land would have fallen away, even without the added load, as a result of the acts of the adjoining owner, the injured party may recover, not only for damage to the land but to the erection upon the land as well. *Stearns* v. *City of Richmond,* 88 Va. 992, 29 Am. St. Rep. 758; *Parke* v. *City of Seattle,* 5 Wash. 1, 34 Am. St. Rep. 839; *Wilms* v. *Jess,* 94 Ill. 464, 34 Am. Rep. 242. However, some eminent authorities have taken the view that even though the land would have fallen without the additional weight, there can be no recovery for injury to anything but the land. *Thurston* v. *Hancock,* 12 Mass. 226; *Gilmore* v. *Driscoll,* 122 Mass. 199; *Shultz* v. *Byers,* 53 N. J. Law, 442; *Gildersleeve* v. *Hammond,* 109 Mich. 431. The case at bar is, perhaps, distinguishable from the ordinary case in that the facts give rise to a strong inference of an implied grant of an easement of lateral support. But even if such inference could not be drawn, the decision might well, it appears, have been based upon the culpability of the lessor who devised the land for a purpose the necessary result of which was a nuisance.

INFORMATION—ELECTION BETWEEN COUNTS.—In the prosecution of the defendant for converting a draft to his own use, the fourth count of the information charged defendant with embezzlement of $250 in money and the fifth count charged him with embezzlement of the draft, under a statute making that offense larceny. Upon a trial defendant was convicted under the fourth count. A new trial being ordered, both counts were submitted to the jury and defendant was convicted under the fifth count. *Held,* that the two counts stated the same offense and that a verdict of "guilty" upon one of the counts and of "not guilty" upon the others, is followed by the same consequences as a verdict of guilty upon all the counts, and when, in either case, a verdict is set aside and a new trial granted on defendant's motion, the case is opened for retrial upon all the counts, and that this conviction should be sustained. *People* v. *Peck* (1907), — Mich.—, 110 N. W. Rep. 495.

Mr. JUSTICE BLAIR, in giving the opinion of the court, says, "The weight of authority, perhaps, supports JUSTICE HOOKER'S opinion (dissenting opinion) in this case, if our determination of the offense charged is limited to the face of the information." But holds that the court, in determining whether such counts charge the same offense, was not limited to the face of the information but was entitled to interpret it in the light of the evidence introduced when the question was presented. *People* v. *McKinney,* 10 Mich. 54; *Van Sickle* v. *People,* 29 Mich. 61. That on a new trial granted on defendant's appeal he must take the burden with the benefit, and go back for new trial upon the whole case, see *Trono* v. *United States,* 199 U. S. 521, 26 Sup. Ct. Rep. 121, 50 L. Ed. 292. This case is not similar to cases where the respondent is charged with a principal offense and convicted of a lesser offense included in it, or where he is charged with distinct offenses in separate counts. *Leslie* v. *State,* 18 Ohio St. 391; *People* v. *Tubbs,* 110 N. W.